

OFFICE OF THE CLERK  
UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

Robert H. Jackson  
United States Courthouse  
2 Niagara Square  
Buffalo, New York 14202  
Phone: 716-551-1700  
Fax: 716-551-1705

**MARY C. LOEWENGUTH**  
CLERK OF COURT  
**PATRICK J. HEALY**  
CHIEF DEPUTY CLERK

Kenneth B. Keating  
Federal Building  
100 State Street, Rm 6070  
Rochester, New York 14614  
Phone: 585-613-4000  
Fax: 585-613-4035

November 8, 2021

Michael Anthony Callinan  
Bruno, Gerbino & Soriano, LLP  
445 Broad Hollow Road  
Suite 220  
Melville, NY 11747

Ryan Craig Goldberg  
Rivkin Radler LLP  
926 RXR Plaza  
Uniondale, NY 11556

Michael P. Versichelli  
Rivkin, Radler LLP  
926 RXR Plaza  
Uniondale, NY 11556

Vincent Frank Gerbino  
Bruno, Gerbino & Soriano, LLP  
445 Broad Hollow Road  
Suite 220  
Melville, NY 11747

Charles Howard Horn  
Russell Friedman &  
Associates Inc  
3000 Marcus Ave  
Suite 2E3  
Lake Success, NY 11042

Jeanne M. Vinal  
Vinal & Vinal  
193 Delaware Avenue  
Buffalo, NY 14202

Max Gershenoff  
Rivkin, Radler LLP  
926 RXR Plaza  
Uniondale, NY 11556

Barry I. Levy  
Rivkin, Radler LLP  
926 RXR Plaza  
Uniondale, NY 11556

In re: Zenith,et al v. Allstate,et al (Case No.: 1:15-cv-00696)

Dear Sirs and Madam:

I have been advised by Judge Richard J. Arcara who presided over the above-referenced action, that it has been brought to his attention that during the time the case was assigned to him, he or his spouse owned stock in Allstate Corp. This stock ownership would have required recusal under the Code of Conduct for United States Judges. Although the only actions taken by Judge Arcara related to referring the matter to a magistrate judge and approving stipulations of discontinuance, and the stock ownership neither affected nor impacted any decisions he made, Judge Arcara has directed that I notify the parties of this conflict.

Advisory Opinion 71, from the Judicial Conference Codes of Conduct Committee, provides the following guidance for addressing disqualification that is not discovered until after a judge has participated in a case:

[A] judge should disclose to the parties the facts bearing on disqualification as soon as those facts are learned, even though that may occur after entry of the

November 8, 2021

Page 2

decision. The parties may then determine what relief they may seek and a court (without the disqualified judge) will decide the legal consequence, if any, arising from the participation of the disqualified judge in the entered decision.

Although Advisory Opinion 71 contemplated disqualification after a Court of Appeals oral argument, the Committee explained “[s]imilar considerations would apply when a judgment was entered in a district court by a judge and it is later learned that the judge was disqualified.”

With Advisory Opinion 71 in mind, you are invited to respond to Judge Arcara’s disclosure of a conflict in this case. Should you wish to respond, please submit your response directly to me on or before November 29, 2021. Any response will be considered by another judge of this court without the participation of Judge Arcara.

Very truly yours,



Mary C. Loewenguth  
Clerk of Court